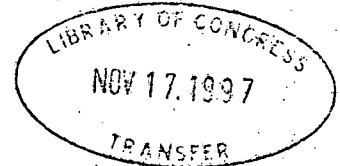


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**THE INTERIOR DEPARTMENT'S FAILURE TO COR-
RECT SERIOUS PROBLEMS IN THE MANAGE-
MENT OF THE INDIAN TRUST FUNDS**

United



HEARING
BEFORE THE
ENVIRONMENT, ENERGY, AND
NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
SECOND SESSION

SEPTEMBER 26, 1994

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(III)

Mr. SYNAR. Our first panel this morning is George Stalcup, Associate Director, Financial Integrity Issues, Accounting and Information Management Division of the U.S. General Accounting Office; Gayle Condon, Assistant Director, joining him; and William Laurie, regional audit manager, Denver Regional Office.

As you know, the policy of the subcommittee, in order not to prejudice past or future witnesses, it to swear all our panelists in. Do you have any objection to being sworn in?

If not, will you raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Let me say right off the top, if I could, that I want to specially thank you, Gayle, and others—including Tom Armstrong from your Office of General Counsel—for what has been a labor of love for many, many years. And I personally appreciate the fact that you all have given us so much advice and counsel on how to pursue this and get these problems fixed.

Your entire testimony will be made a part of the record at this time. We would ask you to summarize, in 5 or so minutes; then we can get into some specific questions about this issue.

STATEMENT OF GEORGE H. STALCUP, ASSOCIATE DIRECTOR, FINANCIAL INTEGRITY ISSUES, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY GAYLE CONDON, ASSISTANT DIRECTOR, AIMD, AND WILLIAM F. LAURIE, AUDIT MANAGER, DENVER REGIONAL OFFICE

Mr. STALCUP. Thank you very much, Mr. Chairman. We appreciate the opportunity to be here today to discuss our work on the Department of the Interior's management of Indian trust funds. I will briefly summarize the information contained in our report on trust fund management improvement options which is being released today. I will also provide an update on BIA's efforts to reconcile Indian trust fund accounts and to develop a trust fund loss policy and restore lost funds to account balance holders.

Interior's longstanding Indian trust fund management problems have been well documented. They include an inability to accurately account for land ownerships and natural resource assets and their associated revenues, the lack of sound trust fund internal controls, policies and procedures, inadequate accounting systems, and inconsistent investment practices. Problems permeate every facet of the trust fund business cycle and have prevented BIA from presenting individual Indians and tribes with an accurate accounting of their funds and paying interest due to them.

Now, I want to point out today that Interior has a number of management and system improvement initiatives underway or planned which, if effectively implemented, could help to improve aspects of its trust fund management. But progress has been slow, and many of these initiatives will not be completed for several years. We believe that Interior needs to consider a number of other options, which are detailed in our report, that could help make additional improvements.

In the past, Interior has not demonstrated the leadership or management commitment needed to carry through on investment efforts, and many previous corrective actions have failed outright

or resulted in only incremental improvements. Interior still lacks a comprehensive strategic plan for trust fund management. The Department needs to reevaluate key program objectives and rethink the basic concept underlying the Secretary's fiduciary responsibility and the wishes of tribes and Indians under self-determination initiatives.

Pending trust fund reform legislation would establish an Office of special trustee for American Indians. It calls for a special trustee with management experience and trust fund expertise and would provide the special trustee with overall responsibility for Indian trust programs, including developing a comprehensive strategic plan, oversight of all reform efforts and coordinating the development of systems, policies, and procedures across the Department. We believe this would help.

Turning to the reconciliation effort, in April we reported on BIA's first effort to reconcile trust fund accounts, which began in May 1991. The objective of this effort was to reconstruct transactions and account balances by going to source documents. After the effort began, BIA found that it could not locate all needed documents and decided not to proceed at that time with reconciliation of individual Indian money accounts.

In April 1994, a work group reported that it was considering other alternatives for IIM account reconciliations, but the group has not met since that time. For tribes, BIA is currently attempting to reconcile accounts for the 20-year period from 1992 back to 1973. Since our April status report on the reconciliation, BIA has continued its work but encountered some additional problems.

For example, when planning an effort to verify Indian royalty accounting data it received from MMS, BIA found that MMS retains supporting documentation for only 6 years and, as a result, reconciling MMS transactions for the entire 20-year period will be impossible.

Further, missing records continue to be a problem throughout the reconciliation. As we have said previously, unreconciled accounts are only a symptom and not a cause of BIA's trust fund management problems. BIA must deal with the root causes. Otherwise, even if it is able to reconcile current account balances, it will continue to have to deal with the issue of account balances in the future.

There is another area where BIA made clear progress. In June 1994, BIA finalized its Indian fund trust fund account loss policy. It defined trust fund losses, including the failure to invest tribal and individual funds and pay interest. We had expressed our concerns on earlier attempts to draft a policy, and BIA has now addressed those concerns. BIA has also made progress in restoring lost funds to trust account holders, reducing amounts owed from about \$11 million in 1992 to \$4 million. This includes most of the \$2 million of account holder losses related to the Treasury's mass cancellation of uncashed checks.

In summary, Mr. Chairman, Interior has initiatives planned or underway to address some of its longstanding trust fund management problems, and there are additional options that could help make other needed improvements. However, Interior's track record on past attempts for corrective action is not good. Interior needs a

comprehensive plan, focused leadership, and a management commitment if it is to carry through on needed improvements.

This concludes my statement. We will be glad to answer any questions the subcommittee may have.

[The prepared statement of Mr. Stalcup follows:]

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to be here today to discuss our work on the Department of the Interior's management of the Indian trust funds. My statement today summarizes information contained in our report¹ on trust fund management improvement options, which is being released today. I will also provide an update on the Bureau of Indian Affairs' (BIA) efforts to (1) reconcile Indian trust fund accounts and (2) develop a trust fund loss policy and restore lost funds to account holders.

Interior's long-standing Indian trust fund management problems, which permeate all facets of the trust fund business cycle, include (1) the lack of accurate, up-to-date ownership information to ensure that revenue is distributed to the correct account holder, (2) inadequate management of natural resource assets to ensure that all earned revenues are collected, (3) weaknesses in trust fund management systems, policies and procedures, and internal controls, including the lack of periodic trust account reconciliations to ensure the accuracy of trust fund balances, and (4) the failure to consistently and prudently invest trust funds and pay interest to account holders.

Interior has management and systems improvement initiatives planned or under way which, if effectively implemented, could help to

¹Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds (GAO/AIMD-94-185, September 22, 1994).

improve its management of the Indian trust funds. However, progress has been slow and many of these initiatives will not be completed for several years. In addition, as detailed in our report, we identified six primary options that could help Interior make additional improvements. They include (1) eliminating backlogs in land title and beneficial ownership determinations and recordkeeping, (2) expanding or undertaking new initiatives with the Departments of Agriculture and Energy for support services, (3) providing training and technical assistance to tribes who wish to assume responsibility for managing their natural resources under self-determination initiatives, (4) obtaining reliable trust fund accounting and subsidiary systems and contracting for banking services, (5) contracting for investment advisors and a custodian to settle trades, safeguard securities, and track investments, and (6) establishing index investment fund options for tribes.

In the past, Interior has not demonstrated the leadership or management commitment needed to accomplish planned improvements and many previous corrective actions have failed outright or resulted in only incremental improvements. In addition, Interior still lacks a comprehensive strategic plan for trust fund management, as recommended in our June 1992 report.² We stated that Interior needed to reevaluate key program objectives and rethink the basic concept underlying trust fund management, including the Secretary's

²Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/APMD-92-38, June 18, 1992).

fiduciary responsibility and the wishes of tribes and Indians under self-determination initiatives. For example, to support a goal of helping tribes and Indians to become self-sufficient, a strategic plan would need to be directed at providing necessary financial and technical assistance and training to help tribes and Indians assume greater responsibility for managing their natural resource and financial assets.

Pending trust fund reform legislation (H.R. 4833) would establish an Office of Special Trustee for American Indians in the Department of the Interior. The Special Trustee, who is to have expertise and experience in trust management-related operations, would be responsible for (1) preparing, in consultation with tribes and appropriate Indian organizations, a comprehensive strategic plan for all phases of the trust management business cycle to ensure proper and efficient discharge of the Secretary's trust responsibilities to tribes and individual Indians, (2) providing oversight of all reform efforts within BIA, the Bureau of Land Management (BLM), and the Minerals Management Service (MMS) related to the Secretary's trust responsibilities, and (3) coordinating the development of systems and policies and procedures of BIA, BLM, and MMS related to the discharge of the Secretary's trust responsibilities. Interior does not currently have a single manager or office with overall responsibility for Indian trust programs.

STATUS OF THE TRUST FUND RECONCILIATION PROJECT

As we reported in April 1994,¹ BIA undertook its first effort to reconcile the Indian trust fund accounts in May 1991. The objective of this effort was to identify, to the extent practical, correct account balances for tribal and individual Indian accounts by using source documents to reconstruct trust account transactions to give account holders as accurate an accounting as possible.

In March 1992, BIA decided not to proceed with reconciliations of Individual Indian Money (IIM) accounts, based on its contractor's report that reconciliations of these accounts were not feasible due to the lack of supporting documentation and the level of effort and associated cost to review millions of transaction documents. In January 1993, BIA created a Work Group to study settlement or other alternatives to IIM account reconciliations. In April 1994, the IIM Work Group was finalizing a proposed IIM account reconciliation discussion paper for comment by tribes and Indians. However, the Work Group has not met since that time and an IIM reconciliation discussion document has not been completed. According to the Work Group leader, the Group hopes to hold a meeting in the fall of 1994, with a number of Indian groups and the InterTribal Monitoring Association (ITMA), to review the draft IIM reconciliation options paper.

¹BIA Trust Fund Reconciliations (GAO/AIMD-94-110R, April 25, 1994).

BIA is currently reconciling tribal accounts for the 20-year period from 1992 back to 1973 and is performing reconciliations between its various trust fund accounting systems and between its general ledger system and Treasury balances.

Changes in the reconciliation status since our April 1994 report include:

- BIA is conducting pilot reconciliations for five tribes¹ before proceeding with reconciliation work for all tribes. BIA has completed field reconciliation work for all five tribes and has issued preliminary reports for four of them. We have reviewed preliminary reports prepared for three of the five tribes. These reports describe (1) problems in completing reconciliations due to missing records, (2) weaknesses in internal controls, and (3) noncompliance with laws and regulations. The reports also include recommendations for corrective actions. BIA has requested source documents in order to begin reconciliation work for the remaining tribes. However, we believe that it is important for BIA to carefully consider the lessons learned from the five tribes' pilot reconciliations, particularly with regard to the limitations on these

¹The five tribes agreeing to participate in the pilot reconciliation procedures are (1) the Assiniboine and Sioux Tribes of Fort Peck, Montana; (2) the Confederated Salish-Kootenai of Flathead, (3) the Confederated Tribes of the Yakama Nation, Washington; (4) the Hopi Tribe of Arizona; and (5) the Three Affiliated Tribes of Fort Berthold, North Dakota.

reconciliation efforts due to missing records, before determining whether or how to proceed with reconciliations of the remaining tribes' accounts.

- During the week of August 22, 1994, BIA began efforts to develop a reconciliation approach to determine whether MMS Indian oil and gas royalty accounting data and payments transferred to BIA were reliable. BIA has expanded the scope of this work and prepared a contract modification to include royalty payments for hard minerals, such as coal. The work is to include a review of MMS procedures and documents in order to evaluate the feasibility and level of effort needed to perform detailed work on MMS receipts and recommend test procedures. However, BIA's reconciliation contractor has determined that MMS requires supporting documentation to be retained for only 6 years. As a result, transactions prior to 1988 cannot be reconstructed.

- BIA selected fiscal year 1990 as a pilot year for testing procedures for reconciling its trust fund general ledger systems data to Treasury data. The pilot, which began in January 1994, has not been completed due to complications associated with
 - (1) BIA's practice of consolidating BIA general operating funds and other non-trust related funds with tribal and IIM funds for Treasury reporting purposes and (2) the number of missing records.

As we stated in our June 1992 report, the unreconciled accounts are only a symptom, and not a cause of BIA's trust fund financial management problems. BIA will need to deal with the root cause of its problems or it will continue to lack assurance that account balances are accurate. For example, BIA needs to maintain adequate supporting documentation, including leases and other contractual agreements, to ensure that all earned revenues are collected, and it also needs to maintain accurate, up-to-date ownership records to ensure that revenues are posted to the correct account.

STATUS OF BIA'S EFFORTS TO DEVELOP

TRUST FUND LOSS POLICY AND RESTORE

LOST FUNDS TO ACCOUNT HOLDERS

In January 1992⁵ and January 1994⁶, we reported that BIA's attempts to draft a trust fund loss policy did not fully address (1) the need for systems and procedures to prevent and detect losses and the need to instruct BIA staff on how to resolve them if they did occur, (2) what constitutes sufficient documentation to establish the existence of a loss, and (3) interest that was earned but not credited to the appropriate account.

⁵BIA Reconciliation Monitoring (GAO/AFMD-92-36R, January 13, 1992).

⁶BIA's Trust Fund Loss Policy (GAO/AFMD-94-59R, January 14, 1994).

In May 1994, BIA finalized its Indian Trust Fund Account Loss Policy. The Policy responds to our earlier concerns by defining trust fund losses, including the failure to invest tribal and IIM funds and pay interest, and by providing for (1) daily reviews of account activity and source documents to identify needed adjustments and corrections, (2) submission of supporting documentation to the Office of Trust Funds Management (OTFM) for review and determination of a loss, (3) written notification to account holders of OTFM determination that a loss has occurred within 60 days of identification of any losses, errors, or overpayments, (4) maintenance of detailed case files, and (5) preparation of monthly, quarterly, and annual reports on trust fund losses.

BIA has also made progress in restoring lost funds to trust account holders. In 1992, BIA owed account holders about \$11 million in trust fund account losses, including losses of principal and interest related to failed financial institutions, claims, and cancelled Treasury checks. Since that time, BIA has received \$5 million in appropriations to repay losses to account holders and it has made \$1 million in adjustments related to the cancelled Treasury checks, leaving a balance of \$4 million to be repaid from future appropriations.

BIA has resolved most of the \$2 million in potential account holder claims related to Treasury's mass cancellation of uncashed checks

under the limited payability provision of Public Law 100-86, the Competitive Equality Banking Act of 1987. BIA has repaid about \$846 thousand to tribal and IIM account holders. BIA also made \$1 million in adjustments. Further, because available documentation was not sufficient to identify all affected account holders, BIA has established a \$500,000 fund for any future claims for reimbursements due to cancelled checks.

In summary, Interior has initiatives planned or under way to address some of the long-standing trust fund management problems, and there are additional options that could help it make other needed improvements. However, Interior's track record on past attempts for corrective action has not been good. Interior needs a comprehensive plan, focused leadership, and management commitment if it is to carry through on needed improvements.

Mr. Chairman, this concludes my statement. I would be glad to answer any questions that you or the Subcommittee Members might have.

(917329)

Mr. SYNAR. Thank you. Thank you very much.

Let's start with some basics for the record. At the end of fiscal year 1993, BIA reported a total of \$2.1 billion in the trust funds, and that total is comprised of about \$1.7 billion in roughly 1,800 tribal accounts and \$390 million in about 337,000 individual Indian money accounts. Is that correct?

Mr. STALCUP. That's correct.

Mr. SYNAR. Now, even though a reconciliation effort was started in 1991, under what I would say was extreme pressure by us in Congress, as of today, am I correct that not a single account, tribal or IIM, has ever been fully reconciled in the history of this program?

Mr. STALCUP. That's correct.

Mr. SYNAR. All right.

The Department's June 13, 1994, trust fund reform plan, the so-called six-point plan, states that there are 2,000 tribal accounts and 327,000 IIM accounts. Now, how did GAO come up with their numbers of 1,800 tribal accounts and 337,000 IIM accounts? Did you get that from BIA?

Mr. STALCUP. We did, but I would like Mr. Laurie to expound on that a little bit.

Mr. LAURIE. The tribal dollar amounts and the number of accounts of the tribes, that came from the Office of Trust Fund Management. The remaining accounts—337,000 IIM accounts—were derived by us getting the raw data and then using that data to come up with these particular figures.

Mr. SYNAR. But the point is that nobody at the Department can punch a button and give us those numbers. You had to do that yourself.

Mr. LAURIE. We had to do that ourselves. It took us a period of time to accomplish.

Mr. SYNAR. Now, of those 337,000 IIM accounts, are all of those active accounts with real, live account holders and good addresses and all the other right information?

Mr. LAURIE. Of the 337,000 accounts, about one-third represent accounts with no addresses—they are closed accounts where the checks have been returned. So in that sense, they are not current.

Mr. SYNAR. Let's focus for a second, if we could, on the Secretary's fiduciary duties to the account holders. As trustee, the Secretary is obligated to accurately account for all trust funds; isn't that true?

Mr. STALCUP. That's correct.

Mr. SYNAR. As trustee, the Secretary is responsible for properly maintaining official Indian land title and beneficial ownership records and for properly managing their natural resource assets; is that true?

Mr. STALCUP. Yes.

Mr. SYNAR. And as trustee, the Secretary is obligated to prudently and properly invest the funds and, to maximize, within the authority of the law, the benefits to the trust account holders; is that true?

Mr. STALCUP. That is correct.

Mr. SYNAR. Now, bottom line: as trustee, isn't the Secretary required at all times to act in the best interests of the account holders?

Mr. STALCUP. Yes.

Mr. SYNAR. The Secretary's duties have generally been delegated to three different Bureaus. One is the Bureau of Indian Affairs, one is the Bureau of Land Management, the third is the Minerals Management Service. And each of them plays a different role in the business cycle, right?

Mr. STALCUP. That's correct.

Mr. SYNAR. OK. Just for the record, isn't it well established in the law that the Secretary's trust duties which require the exercise of judgment and discretion, such as decisions on how to invest the trust funds, may not be delegated to an outside party like a bank. Isn't that true?

Mr. STALCUP. That is true.

Mr. SYNAR. All right.

Now, over a period of the decades, literally scores of reviews of the trust fund program have been conducted by you all at GAO, by the Department's own inspector general, by outside accounting firms, by OMB. Those reports have all found significant and pervasive problems in virtually every facet of the trust fund program. Is that a pretty good summary of the history of those reports?

Mr. STALCUP. Many of these problems have been reported over the years, yes.

Mr. SYNAR. All right. Now what we have done with you all, among other things, is ask you to go back and look at what actions the Department has taken in response to the committee's 1992 report and our recommendations and; further, to review any new options for the trust fund improvements. You have basically come back here today to report to us that the same fundamental problems which have been identified time and time again still exist. Is that correct?

Mr. STALCUP. That's correct.

Mr. SYNAR. You have again pointed out two key weaknesses. One is that despite repeated directives to do so, the Department has not developed a comprehensive strategic corrective action plan which covers the trust fund problems throughout the Department; and they still are not focusing sustained, high-level leadership attention on these problems. Is that correct?

Mr. STALCUP. That's correct.

Mr. SYNAR. So it is evident to everyone that the problems aren't getting the sustained leadership attention they need.

What about the strategic plan? In response to our previous badgering, in the early 1990's the Department actually started work on what they called the framework for developing a strategic plan. What happened to that effort?

Mr. STALCUP. I would like Gayle kindly to respond. She has some information on that effort.

Mr. SYNAR. Gayle.

Ms. CONDON. There were several attempts to draft a strategic plan, starting with the framework. None of those ever resulted in a finalized strategic plan. The last attempt was by the OTFM Director. He had finalized a draft in January 1993. No action was

taken on that. That particular part of the strategic plan only dealt with the OTFM functions, and there was no effort at the Department to develop the portion of the strategic plan for the function outside of OTFM.

Mr. SYNAR. So it just plain died?

Ms. CONDON. Yes.

Mr. SYNAR. All right. Mr. Stalcup, in your testimony you stated that—let me quote it, "Interior's long-standing Indian trust fund management problems permeate all facets of the trust fund business cycle." Your report then goes on and details the problems at some length. Let's walk through some of those.

Your testimony identifies "the lack of accurate, up-to-date ownership information to ensure that revenue is distributed to the correct account holder" and "inadequate management of natural resources assets to ensure that all earned revenues are collected." In fact, that summarizes a lot of different problems, so let's go through them.

First, there are serious backlogs in land title ownership determinations—and they are actually increasing, because funding for the program has not kept up with the workload; is that right?

Mr. STALCUP. That is correct.

Mr. SYNAR. What kind of resources are they going to need?

Mr. STALCUP. We estimate that the Department would probably need to double its current capacity for a period of about 2 years in order to work that backlog down.

Mr. SYNAR. What about the BIA's failure to adequately inspect and enforce Indian leases? Is that still a problem?

Mr. STALCUP. There are still problems with BIA's pre-leasing and BIA's lease inspection and enforcement.

Mr. SYNAR. All right.

In fact, weren't you told that the BIA's Billings, MT, area office had a backlog of about 300 appraisals and weren't you told by that tribe that the BIA had done some appraisals without even visiting the land in question?

Ms. CONDON. That is right.

Mr. STALCUP. Again, Gayle has had this conversation.

Ms. CONDON. Well, Bill Laurie specifically spoke to the tribe, but that is what they said.

Mr. SYNAR. So that—

Ms. CONDON. They are doing the appraisals from the desk in the agency office, in some cases, rather than going out to the land. And the tribe's concern is that that could impact their ability to get fair market value on the leases.

Mr. SYNAR. It would be a little bit of a problem if you haven't even looked at the land.

Gayle, tell me about the weaknesses in the BIA's forest management development data being incomplete, imprecise, and out of date.

Ms. CONDON. Under self-determination, after the old forest management plan was developed, BIA was to develop a forest management plan in conjunction with the tribes because many tribes are conservation oriented and they are not out to market all their timber; they want to plant for regrowth and so forth. And, again, due

to lack of resources, BIA has not been able to effectively work through the timber management planning with all of the tribes.

Mr. SYNAR. Now, the Mineral Management Services also has not been enforcing the regulations governing Indian mineral royalties, are they?

Ms. CONDON. That is the concern we heard from the tribes, yes.

Mr. SYNAR. You reported that none of the Bureaus—BIA, BLM, or MMS—have adequate systems to manage those resources, didn't you?

Ms. CONDON. Yes.

Mr. SYNAR. And both minerals and energy development are vital to the social and economic development of the tribes; isn't that correct?

Ms. CONDON. Correct.

Mr. SYNAR. All right.

Well, if the BIA and BLM and MMS aren't doing these things right, do most of these tribes, or do any of the individual Indian allottees, have the expertise or capability of doing it?

Ms. CONDON. A few of them do. A lot of them don't. And they are going to need help if they are to do this.

Mr. SYNAR. So the key here is to get the Secretary to exercise his trust responsibility.

Ms. CONDON. Exactly.

Mr. SYNAR. And help the account holders to do it.

You also report that "the BIA continues to have serious trust fund accounting, control and system weaknesses." Now, in all fairness, BIA has made some limited progress in that area; have they not?

Ms. CONDON. That's right.

Mr. SYNAR. For example, the Office of Trust Fund Management [OTFM] is contracting for an interim trust accounting system, correct?

Ms. CONDON. That's right, for the general ledger and investment transactions.

Mr. SYNAR. Now, what is the status on that? What was the target date for that?

Ms. CONDON. September 30. And I believe they just announced the award of a contract within the last few days. They can give you the date. We know they recently awarded a contract.

Mr. SYNAR. We have known for a long time there was a need for extra staffing at OTFM, and Jim Parris, the Director of OTFM, developed a plan to add about 49 new positions. How long did it take him to get that staff plan approved by headquarters?

Ms. CONDON. Two years.

Mr. SYNAR. So we are already running late in getting those key people on board, and they don't even have them all hired, do they?

Ms. CONDON. No. The goal is 20 positions by the end of this fiscal year; and the remaining 23 or so, next fiscal year.

Mr. SYNAR. Now, one of the key trust fund accounting problems you point out in your report is that:

* * * the BIA has not yet addressed improper accounting practices by its field office staff or their failure to maintain leases and other contractual documents to support billing and collection functions and trust fund account reconciliations.

That problem is not new, either, is it?

Ms. CONDON. No.

Mr. SYNAR. In fact, you have previously pointed that out to the Department, have you not?

Ms. CONDON. Yes, we have.

Mr. SYNAR. And as a result, the Department is now saying that they are putting written policies and procedures in place for the area offices. Everyone was basically going off on their own prior to that; is that right?

Ms. CONDON. Essentially, yes.

Mr. SYNAR. What is the story here? I mean, kind of walk me through what happened.

Ms. CONDON. On the development of policies and procedures?

Mr. SYNAR. Right.

Ms. CONDON. For the field offices?

A couple of years ago, in response to our June 1992 report, OTFM took some action to contract for field office policies and procedures. Those efforts were slow in coming because the contract either was terminated or it expired and was not renewed.

It appears that this time they have been able to develop some IIM accounting procedures, some desk procedures to kind of standardize the field accounting practices, and they plan to implement those next year. That is only a portion of the policies and procedures that they need to develop.

Mr. SYNAR. So they won't be effective even if those new guidelines—

Ms. CONDON. I haven't seen them, so I don't know if they address only how to process transaction documents to OTFM or if they address things like the need to maintain the lease documents and update the ownership data. I don't know how comprehensive they are.

Mr. SYNAR. So it may not fix the whole problem then.

Ms. CONDON. That's right.

Mr. SYNAR. You also point out that the BIA's field staff who perform these trust fund accounting, report to their respective area and agency offices who are not trained financial managers. They do not report to Jim Parris, who is the director of the OTFM. You called that a "major control weakness." Now, why is that such a problem?

Ms. CONDON. Because if you don't have centralized accountability and standardized instructions and oversight over an accounting operations, the inconsistencies can result in any number of problems and inaccuracies.

Mr. SYNAR. But, if no one person or office is accountable for all of BIA's trust fund operations, you were probably as surprised as I was when we got the Department's June 13 document, that says:

The Office of Trust Funds Management has been charged with overseeing the Indian trust funds program nationally and ensuring that the Federal trust responsibility of the Secretary is appropriately carried out consistent with law, policies and procedures.

That's not correct, is it?

Ms. CONDON. No. Mr. Parris doesn't have line authority over those other operations.

Mr. SYNAR. Now, is Mr. Parris or OTFM responsible for overseeing the whole trust fund nationally?

Ms. CONDON. No, sir, he is not.

Mr. SYNAR. They have no authority over area or agency office people, do they?

Ms. CONDON. That's correct.

Mr. SYNAR. And certainly they have no authority over anyone at BLM or MMS, correct?

Ms. CONDON. Correct.

Mr. SYNAR. You pointed out that the BIA has not always consistently and prudently invested trust funds and paid interest to account holders. Once again, this is not a new problem, is it?

Ms. CONDON. No, sir.

Mr. SYNAR. In fact, you have reviewed this before and the committee addressed it in our 1992 report, did we not?

Ms. CONDON. That's correct.

Mr. SYNAR. OK. Why don't you outline for us what the Department has done to develop a so-called loss policy for trust fund accounts.

Ms. CONDON. They have looked at a number of suggestions we made to them in January 1994, and we believe at this point—and it has taken a couple of years, Mr. Chairman, but we believe at this point they have developed an adequate loss policy. It addresses our former concerns that they have some kind of an internal mechanism for periodic review to identify losses, that they don't put the burden of identification on the account holders; and they have established a periodic review process.

They have planned to maintain history files, case history files on the losses. They have specific criteria for the kind of documentation on a loss that has to be forwarded to OTFM for final determination, and they have very specific timeframes in which these notifications and criteria are to flow up to OTFM and back out to the account holders.

Mr. SYNAR. And they will be notifying account holders of those losses in the future?

Ms. CONDON. According to the policy, if you count the time periods and notifications up the line and out to the account holder, it would be within 60 days of identification and verification of a loss.

Mr. SYNAR. That is really the conclusion we want to get to?

Ms. CONDON. Yes, it is.

Mr. SYNAR. Now, before I leave this line of questioning, isn't the bottom line here that they have failed to give the sustained high-level leadership attention that's required in this area?

Ms. CONDON. That is what we have observed.

Mr. SYNAR. Now, what about the comprehensive strategic plan you have recommended today and in the past, and, I might add, which Congress has repeatedly directed the Department to develop. In the early 1990's, the Department actually did start work on at least what they called the framework, as we said earlier, of an overall strategic plan. It was seriously deficient and widely criticized, but at least they started the effort. It has died, as we said earlier. Is there any effort being made to craft a new plan?

Ms. CONDON. Not that we're aware of.

Mr. SYNAR. All right.

All right. We have had these repeated audit findings, spanning decades, that document pervasive management and accounting problems throughout the whole trust fund program at Interior, and

we have a department that simply refuses to do what is needed to correct them. That being the case, let me ask you this simple question.

As of today, is the Secretary meeting his fiduciary duties to the trust fund account holders? For example, as of today, can the Secretary of the Interior accurately account for the trust funds and ensure the balances are correct?

Ms. CONDON. No, sir.

Mr. SYNAR. As of today, can the Secretary show that he is meeting his fiduciary responsibility to properly manage Indian natural resource assets?

Ms. CONDON. There are problems in managing the natural resources, yes, sir.

Mr. SYNAR. He is not meeting them.

Ms. CONDON. No. They aren't addressed.

Mr. SYNAR. As of today, can the Secretary show that he is meeting his fiduciary obligation to prudently and properly invest the trust funds to maximize the return on their funds within the authority provided?

Ms. CONDON. They have made some improvements, Mr. Chairman; but I think the limitation here is that the account holders want more than one option, and there has been no provision for more than the one option in the government securities or the collateralized accounts. And that's one of the things the pending reform legislation would address through the demo programs.

Mr. SYNAR. Can the Secretary ensure that he has done the best job that he can possibly do?

Ms. CONDON. If the best job would be addressing account holder concerns to provide additional investment opportunities, no, that hasn't been addressed.

Mr. SYNAR. Let's turn to one of my favorite subjects, the trust fund reconciliation effort.

The Department strenuously resisted any effort to reconcile the trust accounts until Congress forced them to start that work. At our insistence and the account holders', in May 1991 the Department started the reconciliation project. In fact, for 6 consecutive years, Congress has prohibited the Department from transferring management of the trust funds to any third party unless they reconcile, audit, and certify the accounts. First, we are not talking about reconciliation here of all the transactions in the tribal accounts over the past 170 years, right?

Ms. CONDON. Right.

Mr. SYNAR. OK. Just a 20-year period?

Ms. CONDON. That's correct.

Mr. SYNAR. From 1973 to 1992 is the timeframe?

Ms. CONDON. Yes.

Mr. SYNAR. All right. And the Department is not actually starting to reconcile all the 1,800 tribal accounts, right?

Ms. CONDON. That's correct.

Mr. SYNAR. It is just starting with the five tribes as a pilot project, correct?

[Witness nods.]

Mr. SYNAR. Now, at the Department's June 13, 1994 briefing for congressional staff, GAO, and some tribal representatives, where

they laid out their six-point plan, Interior reported what I am sure they hoped would look like substantial progress. But so far, they have only looked at noninvestment transactions for the tribes; is that correct, Mr. Stalcup?

Mr. STALCUP. That's correct, yes.

Mr. SYNAR. And reconciliation of the investment transactions was reported only as "under way." Where are they, in reality, on reconciliation of the investment transactions for the five tribes?

Mr. STALCUP. Well, again, Gayle can probably elaborate more, but it is safe to say they are in the very early stages.

Mr. SYNAR. Is that—

Ms. CONDON. That's correct.

Mr. SYNAR. Now, they have reported to us that they are finding a very low rate of error in their reconciliation of these noninvestment transactions. Should we take a lot of comfort that this low error rate is going to hold for the investment transactions?

Ms. CONDON. We understand that the investment transactions are far more difficult and the error rate would very likely be higher. But, Mr. Chairman, they are not going to do detailed transaction reconciliations of these investment accounts. They are going to do yield analyses and tests and match the systems balances, so we may never know what the error rate would be for the investment transactions.

Mr. SYNAR. Now, even this limited reconciliation effort for the five tribes hasn't been trouble free. Your testimony noted the problems because of missing records, weaknesses in internal controls, and noncompliance with laws and regulations. Does that mean that even for this limited 20-year period, we will not end up with accurate account balances for the five tribes' accounts?

Ms. CONDON. There is no way, with the missing data, that they will be able to assure the account balances are accurate.

Mr. SYNAR. So we could have a big problem here even after we go through the exercise.

Ms. CONDON. It will result in a need to settle many of these accounts.

Mr. SYNAR. Now, Congress' directive to the Department requires that the accounts be reconciled and audited, which is being done by Arthur Andersen; and we required that a separate independent entity "certify" the reconciliation and audit work, and the certification contractor is Coopers & Lybrand. Now, Ms. Condon, let me first ask you, is it your understanding that last year Arthur Andersen tried to persuade the Department to get rid of Coopers & Lybrand—

Ms. CONDON. Well, we—

Mr. SYNAR [continuing]. And the certification contract?

Ms. CONDON. We understood there was a problem there, and the Department did consider canceling the contract.

Mr. SYNAR. Because Arthur Andersen didn't want them looking over their shoulder, did they?

Ms. CONDON. Well, I don't want to speak to Arthur Andersen's motive, but it is true that Arthur Andersen was not happy with the concurrent review of their work.

Mr. SYNAR. Well, that's what we understand and some of us raised a lot of hell about it. So Coopers & Lybrand is still on board.

Let me ask you this. Isn't it true that Coopers & Lybrand will not be certifying the accuracy of the account balances when all this is done, that they will just be certifying that Arthur Andersen did what their contract called for?

Ms. CONDON. That's correct.

Mr. SYNAR. Your testimony notes that in March 1992, the Department decided that it would not proceed with reconciliations on any of the 337,000 IIM accounts, primarily because so many critical source documents were missing, and the cost of reviewing the millions of documents that were available would be cost prohibitive. So they did nothing for the rest of 1992.

Then, in January 1993, the BIA created a work group to look at other options, such as global settlement, on the IIM accounts. Isn't it true that that work group didn't even meet until March 1993, and April?

Ms. CONDON. That's correct.

Mr. SYNAR. They didn't meet between March 1993 and April 1994?

Ms. CONDON. They met again shortly before the appropriation hearing last spring.

Mr. SYNAR. You report that in April 1994, when they did finally meet, the working group was finalizing a proposed IIM discussion paper for comment. Is that correct?

Ms. CONDON. Yes.

Mr. SYNAR. Now, the Department wants us to believe that they are really moving on this part of their six-point reform plan. Has that so-called work group even met since April?

Ms. CONDON. No, sir.

Mr. SYNAR. Did that discussion paper ever go out to the account holders or the tribes for comment?

Ms. CONDON. No, sir. And two of the work group members that we spoke with hadn't seen it, either.

Mr. SYNAR. They apparently indicated to you that they hope—hope, mind you—to hold a meeting this fall with the ITMA and other groups.

Well, this is the fall, as of Sunday, if I remember correctly. To your knowledge, have they scheduled such a meeting?

Ms. CONDON. No, sir.

Mr. SYNAR. I would say it's a safe bet that the Department can develop all the plans and proposals that it wants, but if the account holders haven't even been at the table, it hasn't been developed, has it?

Ms. CONDON. That's the way the account holders view it.

Mr. SYNAR. It is not likely that they are going to buy into it, either.

Ms. CONDON. No, sir. They haven't in the past.

Mr. SYNAR. Would you blame them?

Ms. CONDON. They have a high level of concern about how these procedures are developed, because their money is involved. And yes, I guess I'd be concerned if it were my money, also.

Mr. SYNAR. Could you briefly explain how the trust fund-related problems at BLM and MMS affect the effort both in terms of reconciling past transactions as well as keeping them straight in the future?

Ms. CONDON. Yes.

With regard to BLM, the lease inspections involve verification of production on the leases. If that verification isn't done, it impairs the assurance that the payment is for the right amount. And if the royalty payment systems don't have the kind of controls in there that would ensure that all the proper regulations are applied to ensure that they receive all the revenues that are earned on those leases, then the trust fund accounts may not get all the money that was earned from those leases.

Mr. SYNAR. Again, in light of these problems, are we ever going to get a settlement in terms of getting hundreds of thousands of account holders to agree to a stated balance?

Ms. CONDON. There are likely to be some problems in reaching an agreement.

Mr. SYNAR. Now, Mr. Stalcup, we have a number of specific questions for you on the Department's six-point plan and your recommendations for a comprehensive corrective action plan. I will submit those to you for the record.

[The information referred to can be found in the appendix.]

Mr. SYNAR. For now, though, let me ask you to take a minute or two to answer this question.

Mr. STALCUP. Sure.

Mr. SYNAR. Does the Department's six-point plan and everything else they propose constitute a strategic action plan? And if not, why not?

Mr. STALCUP. No, we don't think it does. There are a number of elements that are not addressed in that six-point plan.

Mr. SYNAR. Pull that microphone just a little bit closer.

Mr. STALCUP. I'm sorry.

We don't think it is that comprehensive a plan and we think it fails to address several issues, which include the need for something like what is called for under the proposed legislation in terms of an Office of Special Trustee. The demonstration programs that are provided for under that legislation, as well as some aspects of IIM interests again, which Gayle could probably expound on a little bit.

Ms. CONDON. It doesn't address things like the backlog and ownership recordkeeping. If you don't know who the owners of the accounts are, it is hard to tell that the money is going to the right account. This is pretty fundamental.

Mr. SYNAR. What about the field office problem?

Ms. CONDON. It doesn't address the field office accounting weaknesses, no, sir.

Mr. SYNAR. So if one looks at this six-point plan, it falls way short of what we had intended and what people have been recommending over the years; isn't that correct?

Ms. CONDON. Yes, sir.

Mr. SYNAR. Can you fix the problems with this six-point plan; is there any way to fix the program using this six-point plan?

Ms. CONDON. You need a more comprehensive plan. It doesn't include actions or an approach to solving enough of the problems.

Mr. SYNAR. You don't solve the problem with this?

Ms. CONDON. It is, again, a partial treatment, like some of the plans in the past.

Mr. SYNAR. I have a few final questions.

Isn't it true the Appropriations Committee, as well as our own committee, have repeatedly directed the Interior Department to develop its corrective action plans in full consultation with the Intertribal Monitoring Association and other account holder representatives?

Ms. CONDON. Yes, sir.

Mr. SYNAR. Now, Ms. Condon, you have worked very closely on this issue for a long time, and you frequently talk to the ITMA and tribal leaders and you know what's going on. In your opinion, is the Department meeting those directives to fully consult with these account holders as they develop proposals?

Ms. CONDON. No. By their own admission, they haven't always consulted with the account holders.

Mr. SYNAR. Have the account holders expressed frustration to GAO about this lack of consultation?

Ms. CONDON. Yes, they have.

Mr. SYNAR. Let's take one instance we know of: the IIM reconciliation work group. That's the group that is going to try to figure out what to do with the 337,000 IIM accounts and whether they can be reconciled or whether Interior should just try to settle them. We understand that working group is in the Solicitor's Office, right?

Ms. CONDON. That's correct.

Mr. SYNAR. And no one from the outside, no one representing the account holders, has been a participant in that group, correct?

Ms. CONDON. Not so far.

Mr. SYNAR. Let me ask you this: When a bunch of lawyers in the Solicitor's Office sit down to talk about what Interior should do with the IIM trust fund accounts, who is their client, Interior or the account holders?

Ms. CONDON. They are both the clients. Both the Government and the account holders are the clients at the Interior.

Mr. SYNAR. They have a duty to represent both?

Ms. CONDON. Yes.

Mr. SYNAR. Well, it seems to me that since the Secretary is the fiduciary with certain absolute obligations to act in the best interests of the account holders, that it's the account holders who are the client. Am I right?

Ms. CONDON. It is still a difficult issue because the government attorney still has to represent both. When the results of a solicitor determination would get to the Secretary's level, he would be responsible for making the decision as to how he could best carry that out in terms of resolving the situation with the account holders.

Mr. SYNAR. The account holders are of equal importance as the Department's interests—is that correct?

Ms. CONDON. Yes, they are equal.

Mr. SYNAR. But, in this case, the lawyers don't even have their clients, the account holders, in the room. And when they are representing the Department's interests, they are going to try to limit their liability for mismanagement of the accounts, which is exactly the opposite of their duty to make the account holders whole. So it seems to me they have a conflict of interest trying to represent both clients.

Ms. CONDON. And—yes, that historically has been the problem. They have to weigh both sides.

Mr. SYNAR. That is a big problem.

Ms. CONDON. But the Secretary, as the fiduciary, would make the final decision on any settlement or how that was going to be worked out.

Mr. SYNAR. If the lawyers had to choose—let's say they have a conflict of interest, and they have to choose, they should choose the account holders because the Secretary would obviously represent the Department.

Ms. CONDON. Right. The Secretary would represent the Department. And the Secretary would hear from his attorneys, and he could choose to hear from an independent attorney on the Indian side and then make his final decision. That would be the Secretary's option.

Mr. SYNAR. Let me move to another matter.

I think you all have seen a copy of the June 20, 1994, document entitled "Streamlining Plan Proposal for the Re-engineering of the Bureau of Indian Affairs in Accordance with the National Performance Review." Now, I can't help but note that this proposal calls for consolidating all Federal Indian programs within a single Cabinet-level Department of Indian Affairs.

But leaving that aside, it also calls for a pretty significant reorganization, especially in terms of decentralization of staff out to the field level. Now, you've reviewed this proposal, have you not, Ms. Condon?

Ms. CONDON. Yes.

Mr. SYNAR. Is this plan, and its proposal for massive decentralization, consistent with the way things need to be done regarding the trust fund matter?

Ms. CONDON. Not in our view, Mr. Chairman. In our view, with limited resources, lack of policies and procedures, and very inadequate internal controls, you would need to go the opposite direction and centralize and standardize the processes.

Mr. SYNAR. Do you see any indication in this plan that they're considering the special problems in trust fund management?

Ms. CONDON. The plan isn't that specific to be able to tell what it intends with regard to trust fund management. So I guess that's something you could ask the Department witnesses. Looking at what I said just a moment ago, about the direction it is going, I think it would work against solving the problems we've been discussing here today.

Mr. SYNAR. As you know, the Intertribal Monitoring Association was established to monitor the trust fund reform activities and to help the Department and us here in Congress to work our way through these problems. Now, they represent the tribes and account holders, and they have received some financial assistance from Interior. But last week we were informed by the Department that, in their view, the ITMA must be chartered as a formal advisory committee under the Federal Advisory Committee Act, or FACA.

GAO's lawyers looked at that issue the last time Interior raised it. What is the view of your attorneys with regard to that?

Ms. CONDON. This is another area that could get murky, Mr. Chairman. One could view it as the Indians being the beneficiaries of the trust and therefore not needing a FACA; and Interior hasn't always required a FACA for its dealings with the Indian groups.

But perhaps to avoid revisiting this problem or reaching a stalemate, one option would be for Congress to decide to legislate an exemption for the Indians from a FACA arrangement.

Mr. SYNAR. So is that what you would recommend, to exempt them?

Ms. CONDON. I think it certainly would resolve the issue.

Mr. SYNAR. Believe it or not, that's what I think we're going to try to do.

Let me finish where I started by saying thank you to all three of you and the other people at GAO who have worked on this over the years. You have done a tremendous service. You have been a credit not only to the GAO, but to these sometimes faceless account holders who are depending upon us to straighten this mess out. So on behalf of them, let me take this opportunity to thank you. Also, you may want to stay around and see how the Department answers some of these questions we have asked.

Ms. CONDON. Thank you.

Mr. STALCUP. Thank you very much.

Mr. LAURIE. Thank you.

Mr. SYNAR. Our second panel this morning is Gregg Bourland, chairman of the Cheyenne River Sioux Tribe, who will be representing the Intertribal Monitoring Association—ITMA; he will be accompanied by Mr. Daniel Press, counsel for the ITMA; and Rebecca Adamson, president of the First Nations Development Institute, Fredericksburg, VA, and she will be accompanied by Jerry Reynolds, coordinator, information services.

Do any of you have an objection to being sworn in?

Raise your right hand.

[Witnesses sworn.]

STATEMENT OF GREGG L. BOURLAND, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE, FOR THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS [ITMA], BROWNING, MT, ACCOMPANIED BY DANIEL PRESS, COUNSEL FOR ITMA

Mr. SYNAR. Welcome. Let me begin, if I could, with you, Mr. Bourland. And we look forward to your testimony. The entire testimony will be made a part of the record, and we would ask you to kind of summarize here in about 5 minutes, if you could.

Mr. BOURLAND. OK, real good.

I would like to begin by addressing you in an honorable way and introduce myself properly. My name is Wanbli Awankankapi, which in our Lakota language means "Eagles Watch Over Him." My English name, of course, is Gregg Bourland. I am the tribal chairman for the Cheyenne River Sioux Tribe which represents the Minneconjou, the Siha Sapa, the Oohenumpa, and the Itazipco, a band of the Lakota Nation, of the great Sioux Nation.

I speak to you today not only as the leader of my tribe but as also the representative of ITMA, the Intertribal Monitoring Association on Trust Funds. And additionally, I speak to you as the largest account holder that you have to deal with, and that is the

great Sioux Nation. We are the account holder that began to be reconciled, and then Arthur Andersen and everyone just kind of disappeared and we have never found out what happened. But that's another story.

I think that it's pretty obvious that the problems that have been described by the GAO earlier—we all know what those problems are. We know those problems exist. But I think it is more important to understand that ITMA's role has been one of an overseer throughout this entire process. We have run through, to be real frank with you, Congressman Synar, a lot of hell over the past few years in trying to arrive at a solution; and we believe that that solution is the legislation that you have introduced. But we have been literally put through the mill.

To give you an example, the last time I was in Washington, DC—I came to the District this summer to what I believed was going to be a roundtable discussion, very open, formal or maybe informal dialog regarding how do we all arrive at a common solution to the trust fund problem—I left this great city very disillusioned and very, very upset. I might say, very mad.

I think that you'll find in my written testimony a lot of that anger still exists. It not only exists with me as a representative of the great Sioux Nation—and having served with ITMA for 4 years on the board of directors—but it exists amongst the many, many—as you had indicated, faceless account holders out there. As you had indicated, these are real human beings. These are people out there that have families to feed and have concerns. They are tribes that have governments to operate, and yet they are being treated like second-class citizens. And it is really, really upsetting that this is happening in the United States in this day and age.

I have indicated many times before, if this were a banking situation, some people would be in very serious trouble, if not in jail, right now. There is no American in the United States that would put up with this kind of activity at their local bank. There is no one group of people that would ever allow themselves to be treated in this manner. And yet, because of the trust system, the way that we are treated as people, the Indian people have had to—had to go through this.

But I believe there are some solutions. The special trustee solution is a very, very good solution, and it is very workable. But it is very important to understand that that special trustee be empowered, and I say "empowered" with the greatest amount of authority possible so that it is not—it doesn't wind up becoming some weak office under the Bureau of Indian Affairs. If that were to become the case, then it would be a meaningless position.

There also has to be greater tribal control. I believe the legislation which you have introduced addresses that, and the ITMA is very proud to have taken that position throughout the years. The tribes need greater tribal control. This can be achieved through, naturally, the self-determination process that is currently in place within the government. But I believe also, too, that one of the solutions to the IIM accounts—and I have always said it is very, very simple; the people out there know what the problems are. The people on the reservations, when you walk into the local IIM office, or

Departmental analysis, however, indicates that yields under the "G" fund would be as great, if not greater, than those realized under the present investment scheme.

GAO

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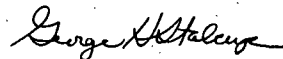
The Honorable Mike Synar
Chairman, Subcommittee on
Environment, Energy, and Natural Resources
Government Operations Committee
House of Representatives

Dear Mr. Chairman:

Enclosed are responses to the questions you provided subsequent to our testimony during your September 26, 1994, oversight hearing on "The Interior Department's Failure to Correct Serious Problems in the Management of the Indian Trust Funds."

I hope that this information is helpful. If you have further questions or would like to discuss any of the issues in more detail, please call me at (202) 512-3406 or Gayle Condon, Assistant Director, at (202) 512-9577.

Sincerely yours,



George H. Stalcup
Associate Director
Financial Integrity Issues

Enclosure

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RESPONSES TO QUESTIONS FROM SEPTEMBER 26, 1994, HEARING

Question 1: GAO's latest report for the Subcommittee and your September 26 testimony both emphasize that it is absolutely essential that the Department carefully and methodically develop a comprehensive strategic plan to correct all the serious trust fund problems throughout the Department. You have made that recommendation before, as has the Inspector General. Congress has directed the Department to develop such a plan. OMB had directed the Department to develop such a plan. Yet we still don't have one. In your view, why does the Department refuse to take such action?

GAO Response: Interior Department officials have told us that they believe that the Department's 6-Point Trust Funds and Trust Asset Management Reform Plan is a strategic plan. The 6-Point Plan is discussed in our responses to other questions, which follow.

Question 2: GAO representatives were present in June 1994 when the Department held a briefing for some Congressional committee staff, including our Subcommittee staff director, and some tribal representatives. At that time, with Mr. Duffy in the lead, Department officials laid out what they called an Indian Trust Funds and Trust Asset Management Reform Plan--otherwise known as the "Secretary's 6-point Plan".

None of the Congressional offices were consulted on that plan as it was being put together, and we are informed that none of the account holder representatives were involved. Was GAO involved in the development of that plan?

GAO Response: GAO was not involved in the development of that plan.

Question 3: While Interior Department witnesses assert that this 6-Point Plan is a strategic plan, at the September 26 hearing, GAO stated that the Department's "6-point plan" does not constitute the kind of comprehensive, strategic effort needed to resolve these longstanding problems. In addition to those you identified at the hearing, in what ways does the 6-Point Plan fail to constitute a strategic corrective action plan?

GAO Response: In our view, the 6-Point Plan falls short of a comprehensive strategic plan in two key areas. First, it does not include certain key elements that would be part of a

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comprehensive strategic plan for trust fund operations, including (1) an analysis of the overall trust fund management mission, (2) identification of all activities needed to fulfill this mission, (3) identification of available internal and external improvement options, (4) establishment of priorities and milestone dates for completing corrective action, assigning responsibility, and holding managers accountable, and (5) participation of key external groups.

Second, the 6-Point Plan does not address all fundamental problems that have been identified or related corrective actions needed to ensure accurate trust fund account balances. For example, the plan does not address (1) serious backlogs in BIA's beneficial ownership information for leases and other land use agreements to ensure that account ownership information is accurate and up-to-date, (2) the Bureau of Land Management's (BLM) inadequate enforcement and inspection of mineral leases to ensure that accurate production data are available to verify the accuracy of corresponding royalty payments, or (3) inadequate Minerals Management Service (MMS) royalty systems to ensure that all earned revenues are received. Further, as we recommended in our September 1994 report,¹ the Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to take immediate action to ensure that leases and other contractual information are maintained and validated to ensure that all earned trust fund revenues are billed for, collected, and posted to the correct account.

Question 4: The first of the Department's "6 points" was to "Complete the reconciliation of tribal trust funds". At the hearing, we discussed the tribal account reconciliation effort. Isn't it true that effort was undertaken by the previous administration at the insistence of Congress?

GAO Response: Yes. Beginning with Interior's fiscal year 1987 Supplemental Appropriations Act, the Congress has continued to address the need to reconcile the Indian trust fund accounts in each of Interior's annual appropriations acts by providing that none of the funds appropriated shall be used by BIA to contract with any third party for the management of tribal or individual Indian trust funds until the funds held in trust for such tribes

¹Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of the Indian Trust Funds (GAO/AIMD-94-185, September 22, 1994).

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or individuals have been audited and reconciled and the tribes or individuals have been provided with an accounting of such funds. In May 1991, BIA awarded a contract for the reconciliation effort, which is ongoing.

Question 5: Point #2 in the Department's 6-point plan is to "Provide essential staffing to the Office of Trust Fund Management". We already discussed the fact that it took Jim Parris, Director of the Office of Trust Fund Management, two years to get his staffing plan approved--and even so, he only gets half the people in FY 94, the current fiscal year. Beefing up OTFM staff certainly isn't anything new, is it?

GAO Response: The Office of Trust Funds Management's (OTFM) staffing needs have been well documented. As noted by the Subcommittee, OTFM's staffing plan was pending for 2 years before it was approved.

Question 6: For the record, please describe GAO's understanding of the Bureau's streamlining/downsizing plan as it applies to the Office of Trust Fund Management, and the effect that plan--and the September 9, 1994 "Allocation and Management of FTE's" directive--would have on the OTFM staffing plan just approved in April 1994.

GAO Response: BIA's streamlining plan called for a 50 percent reduction in Bureau staff by the end of fiscal year 1995. The plan proposed to accomplish this by eliminating middle management positions and delegating decision-making authority to BIA's agency offices, which are located on or near the reservations.

OTFM is responsible for oversight of the trust fund accounting functions, which include (1) developing trust fund accounting policies and procedures and (2) performing periodic reconciliations of account and systems balances. OTFM is also responsible for investing both tribal and Individual Indian Money (IIM) trust funds. Decentralization of OTFM's financial management oversight functions could impact the consistency of trust fund accounting operations.

At your September 26, 1994, hearing, the Assistant Secretary for Indian Affairs testified that OTFM would be held "harmless" from the streamlining efforts. On October 14, 1994, the Assistant Secretary for Indian Affairs signed a memorandum exempting OTFM from the BIA-wide hiring freeze related to the streamlining plan. As of October 27, 1994, streamlining plan showed that OTFM will

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have 96 full time equivalent positions (FTEs) through 1999, a reduction of 11 positions from OTFM's staffing plan, which was approved in April 1994.

Question 7: Point #3 in the Department's 6-point plan is to "Acquire sound, proven, commercially available investment and accounting systems and services to facilitate the transfer of trust fund management to skilled investment professionals." Isn't it true that this proposal is not new either--that the Bureau of Indian Affairs tried to undertake such a transfer in the 1980s, and Congress had to remind them that the Department can not transfer the management of the trust funds to a third party? Does this proposal to transfer the "management" of the trust funds suggest to you--as it did to us--a lack of understanding on the Department's part about the Secretary's trust responsibilities and, if so, why?

GAO Response: In briefings and other discussions of the 6-Point Plan, Department officials have not acknowledged the Secretary's responsibility for, and lack of authority to transfer, the exercise of judgment and decision-making in managing the trust funds. Our September 1994 report reiterated that while the Secretary might contract for technical assistance (such as bookkeeping or investment advice) in managing the trust funds, Interior cannot contract or delegate to a third party the exercise of judgment and decision-making.

Question 8: Isn't it true that the Congress forbid the Department from undertaking any transfer of funds until the reconciliation process was completed?

GAO Response: Yes. Since Interior's fiscal year 1987 supplemental appropriations act, each of Interior's annual appropriations acts have continued to provide that

"none of the funds [appropriated] shall be used by the Bureau of Indian Affairs to transfer funds under a contract with any third party for the management of tribal or individual Indian trust funds until the funds held in trust for all such tribes or individuals have been audited and reconciled to the earliest possible date, the results of such reconciliation have been certified by an independent party as the most complete reconciliation of such funds possible, and the affected tribe or individual has been provided with an accounting of such funds."

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Question 9: The Department did come up with one new thing: they stated in their 6-point plan that they were going to have the private investment managers "supervised" by a "Blue Ribbon Board" which would be appointed by the Secretary--ostensibly similar to those used by State pension plans. (I note for the record that the Department was unable to tell us who would sit on this Board.) Although this portion of the plan apparently is now on hold, for the record please describe any concerns GAO may have about the Department's initial proposal in this respect. Would such a plan, in your view, comport with the Secretary's trust obligations?

GAO Response: The 6-Point Plan did not fully and clearly articulate how the Department defines "supervised." As we previously stated, the Secretary, as trustee for tribes and Indians, cannot delegate to a third party, such as the Blue Ribbon Board, his ultimate fiduciary responsibilities--the exercise of judgment or decision-making. However, the Secretary could establish a Board and contract for investment advisors to assist in trust fund investment so long as the Department establishes investment policies and procedures and provides instructions on how the accounts would be invested.

Question 10: As noted above, Department officials apparently have delayed or dropped this idea. Now they are talking to the Treasury Department about moving all the Trust funds to a "G-Fund", or some other investment account, at the Treasury Department. What does GAO think of the Department's latest proposal for putting all the trust funds in a G-Fund or other investment account at the Treasury Department?

GAO Response: At the September 26, 1994, hearing, Department officials said that they believe that Interior should not be in the investment business and that Treasury is better able to handle this function. The Department is pursuing, with Treasury, the establishment of a G-Fund (government securities fund) for Indian trust fund investments.

The Department's G-Fund proposal requires further examination. Questions that should be addressed include the following:

- Would the proposal satisfy the Secretary's fiduciary responsibility--as established in both statutory and case law--to maximize the return on investments within the constraints of the law?

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- Would the proposal be responsive to tribes who have called for a range of investment options for their trust funds, rather than a single investment fund option?
- Would the Department use the G-Fund as a vehicle for transferring trust funds management to Treasury?

Question 11: At the September 26 hearing Department officials testified that they had not taken action to implement BIA's trust fund management improvement initiatives to contract for investment advisors and a custodian. They said that these initiatives were on hold pending the results of discussions with Treasury to establish a G-Fund for Indian trust fund investments. Evidently, the Department believes that investment advisors and a custodian will not be needed if Treasury agrees to establish such a G-Fund.

What is the status of these initiatives? Do you agree that these initiatives will not be needed, if a G-Fund is established?

GAO Response: According to BIA officials, BIA began developing a request for proposals (RFP) for custodian services in mid-November 1994. BIA plans to submit the draft RFP to the Department by mid-December 1994 for review and approval. The officials also told us that BIA has no plans to initiate a contract for investment advisors at this time because the Department believes that the advisors would not be needed if a G-Fund is established for trust fund investments.

We believe that even if a G-Fund is established, the Department would still need to provide for both investment advisor and custodian services. For example, the recently enacted trust fund management reform legislation (Public Law 103-412, American Indian Trust Fund Reform Act of 1994) establishes a mechanism for tribes to withdraw and invest their own trust funds and requires the Secretary to provide technical assistance either directly or through contracts. This would require the Department to make some provision for investment advisors to analyze investment portfolios to determine the best methods of investment. In addition, custodian services would be useful in tracking investments between BIA and Treasury and ensuring the proper transfer of any tribal trust funds that are withdrawn to investment institutions selected by the tribes.

Question 12: With regard to Point #4, the Department stated that it would "propose legislation to facilitate the assumption by

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tribes of the management and control of tribal trust funds for tribes who wish to elect to do so." Does the legislation just approved by the Congress (H.R. 4833), and sent to President Clinton for signature, accomplish this goal?

GAO Response: Yes. H.R. 4833, which was signed by the President on October 25, 1994 (Public Law 103-412, American Indian Trust Fund Reform Act of 1994), establishes a mechanism for tribes to assume management and control of their trust funds. Specifically, the legislation permits tribes, after developing a plan for approval by the Secretary, to withdraw and invest their own funds.

Question 13: Point #5 in the 6-point plan is to "Work toward resolution of the complex issues surrounding Individual Indian Money (IIM) Accounts." To "work toward" resolution of these issues, the Department's document describes three different working groups for these tasks. Isn't it true that working groups on fractionated ownership, IIM Reconciliation, and Land Records and IIM Systems were actually formed two or three years ago?

GAO Response: Yes. The fractionated ownership working group (formally called the Heirship Task Force) was formed in 1990. The Individual Indian Money (IIM) Reconciliation working group was formed in January 1993. The Land Records working group, which was formed in November 1992, completed its work in July 1993.

Question 14: How do the task forces itemized by the Department differ from the others previously established?

GAO Response: The fractionated ownership and IIM Reconciliation working groups are continuing the work started by the original groups. In the summer of 1994, BIA established a new working group--the Land Records and IIM Systems working group--to look at how trust lands and resource management, trust funds management, and land title and records processes and systems relate and how they should be integrated to provide consistent, accurate ownership information.

Question 15: Have the account holders been participants, to date, in any of these task forces or working groups?

GAO Response: As of the September 26, 1994, hearing, account holders had not participated in the working groups. However,

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Interior's Solicitor's Office, which is leading the IIM Reconciliation working group, invited the Inter-tribal Monitoring Association (ITMA) to a November 9-10, 1994, working group meeting. A Solicitor's Office official explained that while Interior had also planned to invite a number of allottee associations to represent individual Indian account holders, time limitations prevented them from issuing purchase orders to cover allottee representatives' travel expenses. However, a Quinault Association member attended the November meeting at her own expense.

With regard to future participation by these account holder groups, the Solicitor's Office official said that the Department feels that the Federal Advisory Committee Act (FACA) applies. This act requires agencies to charter, as an advisory committee, any organization it establishes or uses for the purpose of obtaining advice or recommendations. The Solicitor's Office official said that a FACA contract would be forthcoming for ITMA and that, in the interim, the Department would issue purchase orders on a case-by-case basis to pay for ITMA's travel expenses to attend working group meetings. However, an ITMA representative said that this approach would not cover their administrative expenses.

We have not addressed whether FACA applies in a situation such as this. We would emphasize, however, that as the Secretary carries out his duties as trustee to the Indians, whose funds are under the consideration of this working group, he has a fiduciary obligation to seek the input of the trustors or representatives designated by them.

The Solicitor's Office official also said that the Department plans to satisfy the concern expressed in Interior's fiscal year 1995 appropriations act conference report that Interior include ITMA and other account holders' representatives in proceedings to develop an IIM account reconciliation approach.

Question 16: Point #6 in the Department's plan is to "Encourage and facilitate more direct tribal management of natural resources on trust lands". Were these efforts already planned or underway at Interior prior to the 1994 development of the Secretary's 6-point plan?

GAO Response: Most of the efforts discussed in Point #6 of the Secretary's 6-Point Plan were already planned or underway as BLM and MMS National Performance Review or management improvement

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initiatives.

Question 17: Excluding the portions of the plan which they can not do--such as turn the trust fund management over to someone else--if Interior actually accomplished all the rest of the things they have on this list, would it fix the trust funds program at Interior? If not, why not?

GAO Response: While implementing the 6-Point Plan would provide a number of improvements, completion of the Plan itself would not fix the trust fund program. As discussed in our response to question 3, the 6-Point Plan does not address a number of fundamental actions needed to resolve trust fund management problems, such as BIA field office accounting problems and the lack of complete, up-to-date lease and ownership information.

Question 18: Isn't it true that in the early 1990's, GAO criticized an Interior Department 6-part plan, which basically recommended the same kinds of things Interior now recommends under this one: finish the reconciliation, acquire reliable systems, etc.? Why did GAO criticize that earlier plan?

GAO Response: While we recognized the Department's 1990 6-part plan as a management improvement initiative, we said at that time, and we have consistently maintained since then, that Interior's and BIA's trust fund management improvement plans have been piecemeal. They have not been tied to an overall comprehensive or strategic approach for solving trust fund financial management problems.

Question 19: As you know, Congressmen Richardson and myself, along with Senator Inouye, introduced legislation to reform the trust fund program statutorily. And we have worked to meld those bills together and get them acted on this year. Among other things, the legislation (H.R. 4833) would establish a Special Trustee within Interior to oversee all trust fund functions and policies, set up demonstration programs to facilitate greater tribal control over trust funds, and require the Secretary to invest and pay interest on IIM trust funds.

Over the past several years, we have worked very closely with GAO, as well as ITMA, First Nations, and other groups on this legislation, and GAO supports its enactment by Congress this year. Are you convinced this legislative solution is the only way to get these problems fixed?

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GAO Response: We fully endorse the provisions of the legislation and view them as important facets of an ultimate solution to long-standing trust fund management problems. For example, we have long pointed to the need for legislation requiring the Secretary to pay interest to IIM account holders. Another key aspect of the legislation is the establishment and funding of the Office of Special Trustee, which would be responsible for developing a comprehensive strategic plan overseeing Indian trust funds and asset management programs across BIA, BLM, and MMS. While Interior could have administratively established this office, it did not do so.

Further, we supported the provision in the draft legislation for a demonstration program, which would have offered tribes an opportunity to develop investment experience and expertise before deciding to assume full responsibility for managing their own investments. As enacted, the legislation does not require the Secretary to establish a demonstration program. Rather, the Secretary is to approve tribes' investment plans and to provide technical and financial assistance to tribes who choose to withdraw and invest their own trust funds. We believe that the technical and financial assistance called for in the act would benefit tribes who choose to withdraw and invest their own trust funds.

Question 20: We understand that the Bureau of Indian Affairs is moving ahead with its streamlining plan, which includes staff decentralization efforts and elevation of BIA to a cabinet-level Department of Indian Affairs. We also understand that many senior level managers are planning to accept buy-outs and retire. How would this affect management capabilities in the areas of trust fund management?

GAO Response: BIA's streamlining plan, along with the plans of other Interior agencies, is a component of Interior's departmentwide streamlining plan. The revised streamlining plan that the Department submitted to the Office of Management and Budget (OMB) on October 13, 1994, did not include the proposal for a cabinet-level Department of Indian Affairs. However, BIA's plan includes this proposal. In late November 1994, we called this inconsistency to the attention of Department and BIA management.

In early November 1994, an Interior official told us that, due to staff reduction levels established for other Interior agencies, the Department had told BIA management that the Bureau did not

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need to reduce staffing levels by as much as the 50 percent goal for the Department and that BIA's downsizing efforts should be spread over at least 2 years, rather than 1 year, which was the Assistant Secretary's original proposal. The Department's streamlining plan submitted to OMB on October 13, 1994, shows targeted BIA staffing reductions of about 5 percent.

With regard to the effect of BIA's streamlining efforts on trust fund management, the Assistant Secretary for Indian Affairs has stated that OTFM will not be affected by BIA's streamlining plan. However, BIA's October 27, 1994, plan showed 96 FTEs for OTFM through fiscal year 1999, a reduction of 11 FTEs from the 107 positions approved in OTFM's April 1994 reorganization and staffing plan.

BIA's streamlining plan also shows reductions of 45 FTEs for the Office of Trust Responsibilities (OTR) from the fiscal year 1993 base of 97 to the fiscal year 1999 target of 52. In order to meet the Secretary's 6-Point Plan objectives to improve land records and IIM systems, the Assistant Secretary for Indian Affairs has exempted OTR's national Land Title Records and Land Record Information programs and offices from BIA's streamlining actions. However, the Department has told OTR that the three new Land Title and Records Office positions approved in Interior's fiscal year 1995 appropriations process cannot be filled at this time. According to an OTR official, these positions are needed to help address serious backlogs in ownership determinations and recordkeeping, which directly impact the accuracy of trust fund accounts. However, our September 1994 report² shows that more than these three positions will be required--OTR will need to double its current resources for up to 2 years to eliminate these backlogs.

BIA's current plan is not detailed enough to fully assess the impact of the planned decentralization and related retirements and resulting management changes on other BIA offices that perform functions related to trust fund management.

Question 21: Does the Bureau's September 1994 streamlining plan appropriately account for the management enhancement and reform efforts necessary in the area of trust funds management? If not, in what ways does the proposal appear deficient?

²See footnote 1.

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GAO Response: As of November 1994, BIA's streamlining plan discussed a proposed organizational structure, including a reduced number of positions and offices, three management layers, and the delegation of management decision-making to the agency office level. However, BIA's plan does not present information on how the proposed organization will support trust funds management or related reform efforts. For example, BIA's plan does not include (1) a revised mission statement, (2) a management strategy for how critical trust fund management functions will be carried out by various BIA offices in the future, (3) a discussion of how management oversight will be performed, (4) a description of the line authority between OTFM, OTR, and BIA field offices that perform trust fund and land records management functions, or (5) a description of the roles, responsibilities, and functions of OTFM, OTR, and BIA's remaining regional, central, and agency offices.

Question 22: In light of GAO's extensive knowledge of the Bureau and of management weaknesses within BIA, please describe any concerns you have over the Department's streamlining plan as it applies to the Bureau of Indian Affairs.

GAO Response: We have three major concerns about the BIA component of the Department's streamlining plan: the lack of (1) a mission statement, (2) information on how BIA will transfer a greater share of BIA's programs to tribes, and (3) consultation with tribes and Indians.

The Department's plan states that BIA will redefine its mission, be streamlined, and become a tribally driven organization. However, BIA has not yet revised its mission statement and it has not provided details on how programs will be managed at the tribe/agency level.

For example, the Department's plan states that BIA will increase the number of programs managed at the agency office level by moving a proposed \$138.1 million in fiscal year 1995 budget authority and an additional \$207.5 million in fiscal year 1996 budget authority to BIA's agency offices, where tribes participate in determining the funding priority for their programs.

While the Department's streamlining plan does not address tribal management of programs, the Appropriations Committees have asked the Department to report on its efforts to promote tribes' self-governance. The Conference Report (H.R. 103-740) on Interior's

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fiscal year 1995 appropriations calls for the Department to submit a report to the Appropriations Committees by March 15, 1995, covering how it plans to downsize and restructure BIA's central, area, and agency offices in accordance with assumptions on the expected level of self-governance compacting and contracting and the need to give tribes a stable funding base.

With regard to tribal consultation, the Department's plan states that no specific decisions on restructuring the field (agency office) and area office operations will be made until BIA has consulted with the tribes. Despite this provision, the Department's and BIA's plans contain a number of other provisions that indicate that such decisions have been made. Examples of these provisions include the following:

- The Department's plan states that BIA will move all operational functions to the field and reduce area office staff by consolidating administrative functions and that BIA will examine consolidating these functions in fewer locations.
- BIA's plan includes four options for replacing BIA's 12 area offices with 7 regional technical assistance service centers, which would support 82 consolidated agency offices but have no line authority over them.
- BIA's plan also shows three bureauwide organization options which place OTFM in a different part of the bureau--under (1) Trust Responsibilities, (2) Financial Officer, and (3) Central Office, with OTFM functions split between policy and operations.
- BIA's bureauwide options also show three different placements for OTR's Land Title and Records Program--under Trust Responsibilities, Operations, and the Administrative Services Center.

In the past, tribes have expressed concern about BIA's failure to consult with them before developing program and organization changes.

Question 23: The Secretary of the Interior has dual responsibilities to manage federal lands and resources and also carry out the government's trust responsibility to the Indians. With regard to these responsibilities, in your view, would the Interior Solicitor be required to provide the Secretary with

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advice from both a federal government and Indian trustee perspective? If so, should both government and Indian representatives be "at the table" during deliberations?

GAO Response: In carrying out his trust responsibilities to Indians, the Secretary is charged with accommodating Indian interests within the confines of the law. In carrying out his responsibilities to manage federal land and resources, the Secretary acts on behalf of the entire American citizenry. In some instances, Indian interests may conflict with national interests, and the Secretary is required to accommodate both to the extent possible.

The Solicitor, as the Secretary's lawyer, should identify potential conflicts for the Secretary and options for satisfactorily resolving them. Offering a spokesperson for Indian interests an opportunity to participate in land and resource deliberations where the Solicitor has identified a potential conflict is one way to ensure that Indian interests are fully articulated and considered.

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